



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Richard L. DeFeo
c/o Randolph C. Lafferty
Cooper Levenson
1125 Atlantic Avenue
Atlantic City, NJ 08401

JUN - 8 2017

RE: MUR 7107

Dear Mr. DeFeo:

The Federal Election Commission reviewed the allegations in your complaint received on July 15, 2016. On May 25, 2017, based upon the information provided in the complaint, and information provided by the respondents, the Commission found that there is no reason to believe that Progress United PAC and Joseph Aiken, in his official capacity as treasurer, or Progress United (the 501(c)(4) organization) violated the Federal Election Campaign Act of 1971, as amended, or Commission regulations with respect to the allegations in this matter. Accordingly, the Commission closed its file in this matter on May 25, 2017.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). Copies of the Factual and Legal Analyses are enclosed for your information.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 52 U.S.C. § 30109(a)(8).

Sincerely,

Lisa J. Stevenson
Acting General Counsel

A handwritten signature in black ink, appearing to read "J. S. Jordan", is written over the typed name of Jeff S. Jordan.

BY: Jeff S. Jordan
Assistant General Counsel
Complaints Examination and
Legal Administration

Enclosure
Factual and Legal Analyses

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Progress United

MUR 7107

I. INTRODUCTION

This matter was generated by a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations by Progress United PAC and Joseph Aiken in his official capacity as treasurer (the "PAC").¹ It was scored as a low-rated matter under the Enforcement Priority System, by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

The Complaint alleges that the PAC failed to file 48-hour notices of independent expenditures related to web and radio ads, which ran the week of May 9, 2016.² Compl. at 2. Also, the Complaint alleges that the PAC did not include a proper disclaimer on these communications. *Id.* at 2, 3. The Complaint attached a screenshot from the webpage, which features a picture of a state assemblyman with the caption "A Bailout for Atlantic City Politicians." Compl. Attach. 1. The assemblyman is not a candidate for federal office.

¹ The PAC is an independent-expenditure-only political committee that registered with the Commission on May 2, 2016. A search of the Virginia Department of Elections and the New Jersey Election Law Enforcement Commission databases found no results for any entities named "Progress United." <http://cfreports.sbc.virginia.gov/>, <http://www.elec.state.nj.us/publicinformation/searchdatabase.htm>.

² The Complaint includes an attachment of a web advertisement, but the Commission was not able to locate the alleged radio advertisements, which allegedly supported Progress United's position.

1 The PAC argues that at the time of its Response, it had not disseminated any
2 communications in connection with any election.³ Comp. Resp. at 1. The PAC states that it
3 was not responsible for any of the activities referred to in the Complaint; instead, a separate
4 social welfare organization called Progress United was responsible. The PAC states that
5 Progress United was organized under Section 501(c)(4) of the Internal Revenue Code.⁴ *Id.* at 1-
6 2. The PAC also states that the activities referred to in the Complaint were issue advertisements
7 related solely to non-federal issues in New Jersey, and did not refer to any federal candidate or
8 any election. *Id.* at 2.

9 **B. Legal Analysis**

10 In relevant part, an independent expenditure is an expenditure advocating for the election
11 or defeat of a clearly identified candidate for federal office.⁵ If an entity makes independent
12 expenditures aggregating \$10,000 or more with respect to a given election at any time up to and
13 including the 20th day before the date of an election, the entity must file a 48-Hour Report
14 disclosing those expenditures.⁶ Whenever a political committee makes a disbursement for a
15 communication through a mailing or general public political advertising, the Act and

³ This statement appears to be accurate. *See* Progress United PAC July Quarterly Report, filed July 6, 2016, Progress United PAC October Quarterly Report, filed October 3, 2016, and Progress United PAC Post-General Report, filed November 30, 2016. However, the PAC appears to have begun disseminating communications the day after filing its Response. *See* Progress United PAC 24-Hour Reports of Independent Expenditures, dated October 29, 2016, October 31, 2016 (2), November 2, 2016, November 3, 2016, reporting independent expenditures made in opposition of Arthur L. Halvorson, a candidate for U.S. House of Representatives in Pennsylvania's Ninth District.

⁴ The Response includes a copy of the Internal Revenue Service Form 8976 that Progress United filed on August 5, 2016, registering it as a social welfare organization. The Commission notes that although Progress United and the PAC are two different entities, Progress United's address registered with the I.R.S. is the same address as the PAC's treasurer, Joseph Aiken, as provided in the PAC's Statement of Organization. Progress United, the social welfare organization, was notified of the complaint but did not file a response.

⁵ 52 U.S.C. § 30101(2), (17)(A).

⁶ 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 109.10(c). The entity must file additional reports within 48 hours after each time it makes or contracts to make independent expenditures aggregating an additional \$10,000. *Id.*

1 Commission regulations require that the communication shall clearly state that it has been paid
2 for by the committee.⁷ *See also* 11 C.F.R. § 110.11(a)(1), (b)(1), (c)(1).

3 There is no available information that communications by Progress United, the 501(c)(4)
4 organization, mentioned a federal candidate or that Progress United qualifies as a political
5 committee. Therefore, there was no requirement under the Act that Progress United file an
6 independent expenditure report or include a disclaimer on its advertisements.⁸ Accordingly, the
7 Commission finds no reason to believe as to Progress United.

⁷ 52 U.S.C. § 30120(a)(1). *See also* 11 C.F.R. § 110.11(a)(1), (b)(1). Additionally, websites of political committees available to the general public must include a disclaimer clearly stating who paid for the communication. 11 C.F.R. § 110.11(a)(1).

⁸ 52 U.S.C. § 30101(2), (4). As the website does not expressly advocate for the election or defeat of a clearly identified federal candidate, Progress United was not required to file an independent expenditure report with the Commission or attach a disclaimer to its advertisement. *See* 11 C.F.R. § 110.11(a)(2).

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Progress United PAC
and Joseph Aiken, as treasurer

MUR 7107

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1 Commission regulations require that the communication shall clearly state that it has been paid
2 for by the committee.⁷ *See also* 11 C.F.R. § 110.11(a)(1), (b)(1), (c)(1).

3 Since it does not appear that the PAC is responsible for the activity mentioned in the
4 Complaint, the Commission finds no reason to believe that the PAC violated the Act or
5 Commission regulations.

⁷ 52 U.S.C. § 30120(a)(1). *See also* 11 C.F.R. § 110.11(a)(1), (b)(1). Additionally, websites of political committees available to the general public must include a disclaimer clearly stating who paid for the communication. 11 C.F.R. § 110.11(a)(1).

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